Supreme Court, U.S.
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In The

Supreme Court of the United States

CHRISTOPHER R. PILENZO,

Petitioner,

v.

RONALD ANGELONE, Director,
Virginia Department of Corrections,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether the Anti-Terrorism and Effective Death Penalty Act of 1996 (A.E.D.P.A) effectively bars the petitioner from relief in Federal Court where petitioner makes a showing that the one year statute of limitations established by A.E.D.P.A should not be applied to a circumstance where the prosecution withheld exculpatory evidence, and such evidence could not be discovered despite due diligence within the statute of limitations.

II. Whether petitioner's guilty plea can be held as unconstitutional where; a) petitioner's plea was effectively involuntary based upon inadequate and misleading information both from the prosecution's failure to reveal exculpatory evidence, and petitioner's counsel's failure to tenaciously pursue investigative avenues which would likely have produced same; b) petitioner's plea was involuntary based on misleading and erroneous interpretation of culpability under Virginia Law Codes.

III. Whether the Anti-Terrorism and Effective Death Penalty Act of 1996 is, in and of itself unconstitutional by removing due process from all those seeking relief in Federal Court by petition for Writ of Habeas Corpus in that the statute of limitations can be so unreasonable as to effectively eliminate any petitioner's ability to perfect an efficacious brief or retain counsel in time to do so; and violates the Constitutional Amendment X governing Separation of Powers.

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PRAYER

Petitioner Christopher R. Pilenzo, *pro se,* respectfully requests that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeal for the Fourth Circuit in this case.

OPINION

There was no opinion rendered in this case from the United States Court of Appeals for the Fourth Circuit. (*See* Appendix A) The opinion by the United States District Court for the Eastern District of Virginia affirmed by the Fourth Circuit court of Appeals is unpublished and is also included in Appendix A. Further there was no opinion rendered by the Virginia Supreme Court. The final order is also attached and is included in Appendix B. The opinion proffered by the Circuit Court of Prince William County is included in Appendix C.

JURISDICTION

The judgment of the United States Court of Appeals for the fourth Circuit was entered on March 22, 2002, ordering the case be dismissed. A subsequent order denying a motion for an extension of time in which to file a petition for rehearing en banc was entered on April 9, 2002. Finally, the United States Court of Appeals filed its most recent order denying the filed petition for rehearing on May 13, 2002. Thus, this petition for Writ of Certiorari is filed within ninety days of the final order from the appellate court. The jurisdiction of this most August court is invoked under 28 § U.S.C. 125(1).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Constitutional Amendment VI.

The Sixth Amendment to the United States Constitution provides for in pertinent part, as follows:

> In all criminal prosecutions, the accused shall ..... be informed of the nature and cause of the accusation.... have **compulsory process** (emphasis added) for obtaining witnesses in his favor, and ..... have the assistance of counsel for his defense.

U.S. Constitutional Amendment XIV

The Fourteenth Amendment to the United States constitution provides in pertinent part as follows:

> ....nor shall any State deprive any person of life, liberty, or property without due process of law.

U.S. Constitutional Amendment X

The Tenth Amendment of the United States Constitution provides in pertinent part as follows:

> The powers not delegated to the United States by the Constitution, nor prohibited to the States, are reserved to the states respectively, or to the people.

Section 9, Paragraph 2

The 9th section, second paragraph of the Constitution provides in pertinent part as follows:

> The privilege of the writ of Habeas Corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

STATEMENT OF THE CASE

Petitioner Christopher R. Pilenzo, was convicted upon a plea of guilty of the crime of felony murder on March 26, 1996. He was later sentenced to a term of twenty years in prison in the Commonwealth of Virginia's Department of Corrections prison system on April 26, 1996, with five years suspended. Mr. Pilenzo had been informed that because ***he had failed to act in a more direct manner in reporting his live-in girlfriend's abuse of her youngest child, Kevin Zimmerman, he was, in fact, culpable for his death when his girlfriend, Ms. Laura Zimmerman undoubtedly caused the death of her child by said abuse.***

As Mr. Pilenzo, unfamiliar with the complexities of the law, and based on facts that arose after the sentencing hearing, began to develop a considered opinion that perhaps he had been mislead by his legal counsel, proceeded to file a direct appeal to the Virginia Court of Appeals. Mr. Pilenzo requested counsel be assigned to assist him in his appeal based on his lack of financial resources. Counsel was subsequently assigned, but failed to even perfect any

briefs despite the fact that among other things, there had been a clear violation of Virginia Code § 19.2-298 in that *no allocution was allowed during the sentencing phase, even though the petitioner had made clear he desired to formally address the court at the time of sentencing.* Counsel, one William Cline, (believed to be currently disbarred) belatedly tried to file a motion for an extension of time in which to perfect a brief, but was summarily denied. Mr. Cline claimed that he was investigating the case and was certain that he would file an appeal. He made these statements to both the petitioner and his father who was coordinating the legal effort. The court then dismissed the appeal on December 16, 1996. Mr. Pilenzo did not learn of it until January 3, 1997. Unsure of how to proceed, the petitioner sought the assistance of his parents to secure new legal counsel. Consequently, the petitioner did not appeal to the Supreme Court of Virginia pending new counsel.

Mr. Pilenzo's parents, who reside outside of the Commonwealth of Virginia and are retired, then agreed to hire new counsel even though it represented a financial hardship. The heavy cost of providing a defense for the petitioner was weighing heavily on them, but, they agreed to help. In the meantime, the petitioner, Christopher Pilenzo was placed in administrative segregation for damage to a cell in the Greensville Correctional Center in Jarratt, Virginia, which proved to be a false charge and he was subsequently cleared. However, during these several months of segregated isolation, he was severely limited in his ability to communicate to the outside world, or receive visitors, and thus he was handicapped in his

ability to assist in his own defense. His parents engaged new counsel in April, 1998 and several months elapsed while the new counsel was briefed on the case and agreed to assist Mr. Pilenzo in his appeals. It was only after the engagement of new counsel did the real work begin to perfect a state petition for habeas corpus.

It was at this point that new and revealing evidence was found as developed by a private investigator hired by several of Laura Zimmerman's relatives to indict and convict her of her child's death Seven (7) of Ms. Zimmerman's relatives hired Wellington Investigations of Manassas to find evidence that would put Ms. Zimmerman behind bars for her child's demise. This evidence, not previously uncovered by the petitioner's legal counsel in his initial defense, was directly material to the claims by the petitioner that; a) Ms. Zimmerman was an abusive mother and; b) that she had been investigated for child abuse by the Manassas Social Services Division prior to the petitioners conviction, and as revealed by the private investigators report, abuse after the petitioners incarceration. (*See* attached, Wellington Investigation Report in Appendix E)

Based in part on this information, but also to substantiate a claim of ineffective counsel, and a denial of constitutional rights, the petitioner's counsel filed a petition for Writ of Habeas Corpus in the Prince William County Circuit Court on June 22, 1999. As noted above, the writ alleged that *the prosecution, made a deal with Ms. Zimmerman to testify against the petitioner, had withheld exculpatory evidence and stated that his plea of*

guilty was wholly involuntary based on erroneous information provided by his defense counsel. The Circuit Court denied and dismissed said petition on October 8, 1999. The petitioner then appealed to the Supreme Court of Virginia, which court refused the appeal and dismissed his case without an opinion.

On June 5, 2001, the petitioner, Christopher R. Pilenzo, by counsel, filed a federal petition for Habeas Corpus in the United States District Court for the Eastern District of Virginia, Richmond Division. The District Court denied and dismissed the petition on October 25, 2001, finding that the petition was barred by 28 § U.S.C. 2244(d)(1) because it had not been filed on a timely basis. The District Court expressly rejected the petitioner's claim by counsel, that he was entitled to equitable tolling. The court could not understand why it had taken Mr. Pilenzo so long to prefect a state petition for habeas corpus and was unsatisfied by his counsel's explanation.

The petitioner, by counsel, then filed an appeal in the United States Court of Appeals for the Fourth Circuit. In it, his attorneys continued to argue that he was entitled to equitable tolling, in effect declaring that the federal clock did not really being ticking until Mr. Pilenzo's state petition was filed and adjudicated. The court disagreed and dismissed the appeal. Subsequently, counsel filed a petition for rehearing without Mr. Pilenzo's leave to proceed since in his opinion, a crucial argument was not enumerated strongly enough from the original habeas corpus petition in the trial court onward to the federal filing. At the same time, petitioner filed a motion pro se, for

an extension of time to file a petition for rehearing and he notified his counsel of their dismissal. The United States Court of Appeals for the Fourth District denied both the petitioner's motion on April 9, 2002 and the petition for rehearing on May 13, 2002. (App. D)

REASON FOR GRATING OF WRIT OF CERTIORARI

Section I. AEDPA vs. 28 U.S.C. 2254(e)(2)(A)(ii)&(B)

Petitioner, Christopher R. Pilenzo, was denied due process of law by the misrepresentation of his latest attorney, Laura L. Wagner's failure to explicitly state to the court, the Brady and Giglio material at issue in Mr. Pilenzo's involuntary plea of guilty. Such material was suspected to exist by the petitioner from his own intimate relationship with Ms. Laura Zimmerman, and from of information contained in a **CASA Report** (*See* App. E) prepared by the Department of Social Services in Prince William County. This report was given to the petitioner in December, 1995 at a hearing on the custody of the other Zimmerman child in Juvenile Court. This hearing took place prior to the petitioner's guilty plea and sentencing. The juvenile court records were sealed and legal counsel was unable to obtain anything more than the final report on the matter. While exculpatory evidence might have been construed from the report, no real corroborating evidence was available to the petitioner at the time of his guilty plea and sentencing. One can clearly observe that in the CASA Report there are clear and unambiguous statements that directly tie Ms. Zimmerman to abuse of her children. *The County Prosecutor was clearly aware of*

this information and refused to further investigate or turn over any information that would have assisted the petitioner in his defense. One could conclude from all of this that the prosecutor's office made a deal with Ms. Zimmerman to support her in retaining the custody of her other remaining child in exchange for testimony against Mr. Pilenzo. Thus, Mr. Pilenzo became the target of the prosecution and also the second victim in this crime. In sum, Ms. Zimmerman was the likely perpetrator of the demise of her son Kevin, but the prosecution chose not to pursue her in spite of information they obviously had about her in order to win their case.

The Commonwealth's obligations to disclose all favorable information to the defendant is comprehensive and mandatory, *Brady v. Maryland,* 373 U.S. 83 (1063), *Kyles v. Whitley,* 115 S. Ct. 1555 (1995). This favorable information would include any and all evidence or information in the possession of the government which may be favorable to the defendant and material to the issue of guilt or punishment of the defendant, or which could potentially weaken or affect the weight of any evidence which the government anticipated introducing at trial, or which in any way may aid the defendant in ascertaining the truth, specifically including, but not limited to, any information or whatever source which may indicate or could lead to information indicating that this defendant was not fully aware of the legality of his actions. *Brady v. Maryland,* 373 U.S. 83 (1963), *Kyles v. Whitley,* 115 S. Ct. 1555 (1995).

In the discharge of its obligations under *Brady,* this duty extends to all favorable evidence in the government's possession, including exculpatory evidence and any evidence adversely affecting the credibility of government witnesses. Among such favorable evidence would be impeachment evidence, evidence of promises, rewards, inducements or agreements by and with the United States Government of other **government** entities, evidence of drug abuse, and inconsistent statements or lies by witnesses. Any evidence that can be used to impeach or discredit Commonwealth witnesses is *Brady* material and must be disclosed, under *Brady,* there is no distinction between impeachment evidence and exculpatory evidence. *See United States v. Bagley,* 473 U.S. 667 (1985), *Kyles v. Whitley,* 115 S. Ct. 1555 (1995).

Although the government may characterize favorable evidence such as witnesses' criminal records and plea agreements as *Giglio* material, it is also impeachment evidence and, as such it constitutes *Brady* material and must be produced to the defendant. In Mr. Pilenzo's case, the Commonwealth had in its possession exculpatory information about its key witness, Laura Zimmerman, which was never disclosed to the defense. The Department of Social Services had information that Ms. Zimmerman was abusive to her children. On the day Kevin Zimmerman died, the Prince William County Juvenile and Domestic Relations Court entered an order giving the City of Manassas Department of Social Services custody of Martin Zimmerman, Kevin's three year old brother. The Department of Social Services then conducted an extensive investigation of Laura Zimmerman and her

family. In the summary section of the **CASA Report** (noted above) (App. E) the case worker states that there may be dangers inherent in Martin residing in his maternal grandparent's household because court records and school history appear to indicate that there are few restrictions in the home and apparent disregard for the law. The case worker also recommended that Laura Zimmerman should not be permitted to be alone with Martin. Further, the CASA recommendations include statements that Ms. Zimmerman should attend *parenting education to help her understand the different development states of a child and alternatives to physical discipline.* In verbal testimony before the court, the case worker also noted that neighbors had reported incidents of abusive behavior and discipline by Ms. Zimmerman toward her children.

Clearly then, the prosecution had exculpatory information in the files of the Department of Social Services. The information revealed that Ms. Zimmerman herself had abused her children, and that she lacked proper parenting skills regarding the discipline of her children. This material was not disclosed to the defense, and was not available for use by Mr. Pilenzo's attorneys in their preparation for the case. Pursuant to ***United States v. Aguars, supra,*** the suppressed information was of such significant value, that the prosecutor was required to disclose it, even without a specific request. This omitted evidence creates a reasonable doubt as to Mr. Pilenzo's guilt. This evidence actually points to Ms. Zimmerman as the perpetrator of the crime. Ms. Zimmerman's testimony was the only testimony which placed the blame for Kevin Zimmerman's injuries on Mr. Pilenzo. There

were only two people who could have committed the abuse - Ms. Zimmerman, or Mr. Pilenzo. The fact that Ms. Zimmerman had a history with the Department of Social Services as an abusive parent relates directly to her lack of credibility and her role in the heinous crime.

Despite Mr. Pilenzo's insistence that he did not inflict the injuries on Kevin Zimmerman and that Ms. Zimmerman did, his attorneys were also aware that Ms. Zimmerman had given several different versions of the events to the police, and they actually had a tape in their possession in which Ms. Zimmerman *denied that Mr. Pilenzo inflicted the injuries* on her deceased child's body which lead to his demise. They were also aware of the fact that through the efforts of Mr. Pilenzo, that the High Point, North Carolina Department of Social Services also had information about Ms. Zimmerman's mistreatment of her children and suspected drug activities of her family.

As the fifth Circuit found in the *East* case, and the Third Circuit found in the *Carter* case, the failure of the prosecutor to disclose this evidence rises to the level of a constitutional due process violation, and the petition for writ of habeas corpus must be granted.

However, the petitioner does preserve his claim of *Brady* and *Giglio* material because it was made at every stage of appeal, and in every petition for habeas corpus. The primary fact that seems to evade the petitioner's legal counsel, the United States Court of Appeals for the Fourth Circuit of Virginia, and the United States Court of Appeals for the Fourth Circuit,

is the fact that new evidence wasn't made available to Mr. Pilenzo until December of 1998. Under 28 § U.S.C. 2254 (e)(2)(A)(ii)&(B):

> (2) If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary Hearing on the claim **unless** (emphasis added) the applicant shows that...
>
> (A) the claim relies on .....
>
> (ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and
>
> (B) the facts underlying the claim would be sufficient by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

Given that such witness testimony existed which would tend to suggest that Ms. Zimmerman, the mother of the deceased, was known to abuse her children by various family members, friends and neighbors, it is not unreasonable to conclude that the petitioner could have satisfied a factfinder that he was not guilty of the crime committed, or at least that evidence was available that would cause further investigation of a more likely perpetrator, and shed serious doubt on the guilt of the petitioner.

Nevertheless, the real issue here is whether or not the Federal District court and subsequently the Fourth circuit Court of Appeals erred by dismissing the petitioner's claim without an evidentiary hearing. In *Cristin v. Brennan,* 281 F.3d 404, the Third Circuit pointed out that it is within the discretion of the Federal District Court to order a evidentiary hearing. The petitioner holds the view that the Fourth Circuit Court should have, in light of the clear facts in this case, allowed him the opportunity to bring forth the newly discovered evidence that came into his possession after his plea and sentencing.

While it is true that trial counsel had an obligation to properly investigate the circumstances surrounding a case in order to provide an affirmative defense as demonstrated by *Virginia Department of Corrections v. Clark,* 237 VA 525 (1984) it is also the obligation of any post-conviction counselor to make it clear to the court that not only is the petitioner alleging in his arguments that the prosecution failed to divulge evidence of an exculpatory nature in violation of the trial court's discovery order, but that since the time of the petitioner's conviction, evidence was found that may prove his claim to be true. At the time of trial, the only real corroboration the petitioner had was the flimsy recommendations set forth in the Prince William County Department of Social Services Child Welfare Division's **CASA Report**. In the beginning of 1999, Mr. Pilenzo possessed a concrete list of witnesses who could offer testimony that the deceased Kevin Zimmerman was an unwanted and neglected child, who was subjected to unhealthy, immoral influences and verbal and well as physical abuse at the hands of

not only this mother, but other members of his extended family. (*See* App. E, the Wellington Investigation Report). From the report, conducted by Mr. Steve Copeland, a former Virginia State Trooper, at the request of members of the Zimmerman family, it became abundantly clear that Ms. Zimmerman was an angry, amoral, and disturbed individual given to violent outbreaks and not above venting her frustrations on her own children. Moreover, given the content of the statements made to Mr. Copeland and included in his report, it became clear that *the Commonwealth had not only ignored information they obviously had about Ms. Zimmerman, but they did not reveal what they knew to the petitioner and his counsel.* One might conclude that not only is Mr. Pilenzo a victim of this miscarriage of justice but even more tragically, he is being denied an opportunity to make his case within the legal system supposedly available to every American.

In summary, the United States Federal District Court for the Eastern District of Virginia and the United States Court of Appeals for the Fourth District erred by not granting an evidentiary hearing to examine these facts. Rhetorically, the petitioner wonders what harm would have been caused by the court's desire to make sure a serious miscarriage of justice had not occurred? In effect, by allowing the Anti-Terrorism and Effective Death Penalty Act of 1996 to bar the petitioner's claim, it could be said that in this nation, if a miscreant prosecuting attorney can effectively hide evidence long enough (say, beyond the AEDPA one year time limit) then an **unlawful** conviction bolstering the prosecution's conviction

record will stand. This can not possibly be the intent of either the legislators in our Congress, or the judiciary. These very issues have been addressed in *Murphy v. Johnson*, 205 F.3d. 809, 815 (5th Cir. 2000) and more recently in *Richardson v. LeBlanc*, 171 F. Supp. 2d. 629 (2001).

While the petitioner recognizes that none of these citations in any way guarantees him an evidentiary hearing, he would have appreciated, at the very least, some explanation as to why his petition for habeas corpus relief did not even rate examination considering that the fact that the likely perpetrator of this heinous crime is still at large and, according to App. E, continuing her abusive behavior. We believe that the court has a duty to perform, if not for the sake of the petitioner, then for the interests of justice for those innocent members of society who may reap the whirlwind of evil when the system fails?

Section II. Involuntary Plea

Assuming the petitioner might overcome the barrier imposed by the **A.E.D.P.A.** he realizes he must overcome the contention that his plea of guilty was voluntary and thus constitutionally valid. Naturally, the petitioner avers that his plea should be held as involuntary based upon the lack of exculpatory evidence, as discussed in Section I of this petition, but in is also involuntary because of the ineffective assistance of his trial counsel in several respects.

Sec.II, Subsection A. Counsel Misinterpreted VA Code 18.2-23

Defense counsel mistakenly told petitioner that because he suspected that Ms. Laura Zimmerman was abusing her children and he failed to report his suspicions to the proper authorities, he could be deemed by the court to be a "responsible care giver" under the **Code of Virginia 18.2-33** and was thus culpable for the child's death. **(Tr. P.39) (Also *See* VA. Code Sec. 18.2-371.1)**. Given that Ms. Zimmerman was present at the time leading up to the child's death and had every opportunity to commit the fatal act upon her child, as well as known abusive behavior (now corroborated by newly discovered material) under any law enforcement criteria, she should have been a prime suspect in the investigation of this case. She was also the legal guardian and the primary care giver of her deceased child, Kevin. Mr. Pilenzo's culpability was nonexistent under the law, thus, it is difficult to understand under the broadest interpretation of the law, that the petitioner should be the primary target of prosecution. To suggest Mr. Pilenzo's culpability in this situation would be akin to a finding of guilt for child abuse against any patron of a supermarket who witnesses a frustrated mother beating her child and does not act directly to intervene.

As a result, the petitioner has also become a victim of legal incompetence and has been incarcerated for over six years for a crime he did not commit. Additionally, **his** plea of guilty was made under extreme duress, under threats of capital punishment made by the prosecution, and encouragement by own legal counsel who made mistakes in the interpretation

of the crime of *felony murder* under Virginia law, to accept a plea, and in the final analysis, did not provide an adequate defense. Thus, under these conditions and circumstances, the petitioner accepted a plea of guilty in spite of his continued claims of innocence.

In addition to not presenting the petitioner's version of the events and his understanding of the guilty plea, counsel's advice that he was guilty because he did not take action was also erroneous and amounted to ineffective counsel. **VA Code Sec. 18-2-37.1, Abuse and Neglect of Children**, provides in pertinent part, as follows:

> A. Any parent, guardian, or other person responsible for the care of a child under the age of eighteen who by willful act or omission or refusal to provide any necessary care for the child's health causes or permits serious injury to the life of health of such child shall be guilty of a Class 4 felony.

By the plain language of this statute, Mr. Pilenzo would not be guilty of a felony for failing to act upon seeing Ms. Zimmerman physically abuse her children. Mr. Pilenzo was neither a parent nor a guardian for the children. Furthermore, he was not responsible for the care of the children. The children were Ms. Zimmerman's children, and she was responsible for their care. There is no authority to support defense counsel's interpretation of this statute to mean that Mr. Pilenzo could be guilty of felony homicide for failing to report Ms. Zimmerman's physical abuse of her children. Trial counsel, therefore, wrongly advised Mr.

Pilenzo that he was guilty under the statue simply by failing to intervene, when Ms. Zimmerman physically abused the children. As a result of this inaccurate and incompetent advise, Mr. Pilenzo pled guilty to the charge. However, as the record of the guilty plea indicates, ***defense counsel never let the trial judge know that this was their understanding of the statute, and that Mr. Pilenzo was only pleading guilty to not doing enough to stop the abuse.*** The trial judge and the Commonwealth believed that Mr. Pilenzo was pleading guilty to committing the abusive acts which resulted in the death of Kevin Zimmerman.

In *Dickerson v. Vaughn,* 90 F 3d. 87 (3d. Cir. 1996) the petitioners pled *nolo contendere* based on counsel's erroneous advice that a pretrial ruling on double jeopardy could be appealed after the plea. The court granted the writ of habeas corpus, finding that counsel was ineffective. Similarly, in ***United States v. Streater,*** 70 F 3d 1314, 1322-23 (D.C. Cir. 1995) the attorney's advice to his client to plead guilty was found to be ineffective assistance of counsel when counsel recommended a guilty plea based on an erroneous application of Fourth Amendment law. Counsel in Mr. Pilenzo's case were similarly ineffective for informing Mr. Pilenzo that he could be found guilty under the statue simply for not intervening in the abusive situation between Ms. Zimmerman and her children. Counsel for Mr. Pilenzo erroneously applied the law in advising Mr. Pilenzo that he could have been convicted under this scenario. Mr. Pilenzo could not have been found guilty of felony homicide under the facts presented by Mr. Pilenzo. He never admitted that he had abused the children, and he would not have pled

guilty if he realized that he was actually pleading guilty as the abuser.

Under *Strickland v. Washington*, 466 U.S. 668, 104S,Ct. 2052, 80L.Ed.2d 674 (1984) a defendant must show that his counsel's performance in his defense fell below that of a reasonably competent attorney. *Strickland*, 466 U.S. at 687, 104S Ct. at 2064 Second, the defendant/petitioner must establish prejudice by showing "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694, 104S Ct. at 2068. Such are the 'two prongs" of the ineffective counsel standard. In the instance of a guilty plea, all the petitioner need to is show he wouldn't have plead guilty had his attorneys, not been deficient in their performance. This is less than the preponderance of evidence standard:

> [the outcome determinative] standard is not quite appropriate.... The result of the proceeding can be rendered unreliable, and hence the proceeding itself unfair, if the errors of counsel cannot be shown by a preponderance of the evidence to have undermined the outcome.

Id at 693-94

In this context, the petitioner, Christopher Pilenzo, can satisfy this criteria by averring he would have gone to trial had his attorneys not told him he was guilty for "doing nothing, or not enough to prevent the death of the victim, Kevin Zimmerman" This was precisely the point of *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Thus,

the petitioner holds that the attorneys in whom he placed his trust, misinterpreted the law, and avoided a trial that they believed they could not win, in spite of the lack of evidence and any eye witnesses to the crime and a more logical suspect they should have pursued. Had they not convinced the petitioner that he was guilty of a felony under their reading of the law, (his last attorneys of record clearly stated that this was incorrect) he would not have plead guilty and gone to trial. They also failed him in their lack of pursuing the obvious issue of the failure of the prosecution to turn over exculpatory evidence, the CASA Report findings, and the more likely perpetrator Ms. Zimmerman.

Now, in light of the new evidence brought forth by the investigation initiated by the Zimmerman family relatives, it is clear that the petitioner is being incarcerated for a crime he did not commit, and is being denied due process by the courts who would deny him a hearing.

Unconstitutional Nature of the Anti-Terrorism and Effective Death Penalty Act

Any time the issuance of a Writ of Habeas Corpus is denied to an applicant who presents egregious examples of Constitutional violation, not only has due process been denied, nor has the understanding of equal application of the law been destroyed, but the Constitutional promise that the privilege of Habeas Corpus "shall not be suspended" has been broken. It is not enough for the court to point out that the process of Habeas petitioning is still in place despite denials based on the arbitrary statue of limitations in AEDPA.

A "process" for redress for Constitutional violations is no process at all if it rejects efficacious claims without even examining the substance of the claim. It becomes a sham then, if it equates to the suspension of Habeas Corpus to all but a select few.

The petitioner appreciates the intent of Congress and the courts to effect "finality" of conviction in that prisoners may not file successive petitions with new claims to either forestall execution indefinitely, or clog the courts, as an act of frivolous, or malicious petition retribution. However, our forefathers felt it of paramount importance to declare that the privilege of Habeas Corpus "shall not be suspended" but for compelling reasons. The convenience of the Federal Court system or a politician's desire to satisfy the blood lust of an enraged public fails to satisfy this test.

A.E.D.P.A. is a bad law. It 'hot-wires" the principles of the Constitution and effectively purloins the privilege of Habeas Corpus petitions from the people. The simple fact remains that if Congress wants to suspend Habeas Corpus petitions, it will need to pass an Amendment to the Constitution, and not simply pass a law. This is a key point in the defectiveness of **A.E.D.P.A.** which is a law masquerading as an Amendment in that it unlawfully impinges on a Constitutional privilege. **A.E.D.P.A.** is a procedural violation created by the Congress of the United States. Instead of obtaining the required number of votes necessary to curtail Habeas Corpus petitions through an amendment to the Constitution, which requires a two-thirds vote of Congress, and a supporting vote of the states, a much lower thresh hold

was more easily achieved by passing a law, which resulted in the same goal under **A.E.D.P.A.** An analogy in this instance, is likening **A.E.D.P.A.** to the turning of a faucet down from full blast to allow only a trickle of petitions in order to suppress the number of frivolous claiMs. However, doing this not only damages legitimate claims, but circumvents the very purpose of the Constitutional protections. Thus, the flaws in this act creates a "sewage trap" where meritorious claims run the risk of evaporating in the twists and turns of an elbow joint without ever reaching the surface. The petitioner beseeches this August court to remove this "elbow joint" and extract the diamond ring trapped within.

A.E.D.P.A. Violates the Tenth Amendment

The **A.E.D.P.A.** usurps a state's right to address potential Constitutional violations in convictions in the manner and time frame in which it is best able. If a double standard exists as to the true amount of time an inmate in Virginia for example has to preserve his Habeas Corpus petition, then the confusion created has the potential of robbing him of his privilege to seek redress for actual Constitutional violations.

A.E.D.P.A. states that an incarcerated individual has one year from the date of the final order issued by the state to file a petition for Habeas Corpus in Federal Court. Such as mandate was put forth in order to give the state time to respond and correct any manifest injustice before the Federal system "second guesses" the state's judicial system. Of this, there is no question.

This law in effect, offers false hope to any incarcerated citizen. Time and again, attorneys for Mr. Pilenzo and countless others trapped illegally in the penal system of Virginia, have claimed that the one year **A.E.P.D.A.** clock doesn't begin ticking until the Virginia Supreme Court issues an order denying a Habeas Corpus petition. It is the Commonwealth of Virginia's prerogative that a person be given two years from the final order of any direct appeal to perfect and proffer a petition for Habeas Corpus. Under the separation of powers clause of the Tenth Amendment, a lower Federal Court has no right to force its interpretation of a one year statute on the Commonwealth of Virginia. Doing so is akin to rewriting the Constitution for its own convenience.

The actual question here is "at what point does the Federal clock being ticking if the state's clock runs longer?" The petitioner requests the court establish some form of "daylight savings" for the Commonwealth's Habeas statute.

PRAYER FOR RELIEF

WHEREFORE: Petitioner respectfully requests that this Court grant a Writ of Certiorari.

Christopher R. Pilenzo
Inmate #236273
Nottoway Correctional Center
P.O. Box 488, Burkeville, VA.
23922-0488

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UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 01-7949

CHRISTOPHER RONALD PILENZO,
Petitioner - Appellant,

versus

DIRECTOR OF THE DEPARTMENT OF CORRECTIONS,
Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Richard L. Williams, Senior District Judge. (CA-01-365-3)

Submitted: March 14, 2002
Decided: March 22, 2002
[Entered: March 22, 2002]

Before NIEMEYER and KING, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Laura Lynne Wagner, Richmond, Virginia; Ned Matthew Mikula, RUDY & MIKULA, Chesterfield, Virginia, for Appellant. Mary Kathleen Beatty Martin, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

See Local Rule 36(c).

PER CURIAM:

Christopher Ronald Pilenzo appeals the district court's order denying relief on his petition filed under 28 U.S.C.A. § 2254 (West 1994 & Supp. 2001). We have reviewed the record and the district court's opinion and find no reversible error. Accordingly, we deny a certificate of appealability and dismiss the appeal on the reasoning of the district court. See Pilenzo v. Director, Dep't of Corr., No. CA-01-365-3 (E.D. Va. Oct. 25, 2001). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED

JUDGMENT

FILED: March 22, 2002

UNITED STATES COURT OF APPEALS
for the Fourth Circuit

NO. 01-7949
CA-01-365-3

CHRISTOPHER RONALD PILENZO
Petitioner - Appellant

v.

DIRECTOR OF THE DEPARTMENT OF CORRECTIONS
Respondent - Appellee

Appeal from the United States District Court for the Eastern District of Virginia at Richmond

In accordance with the written opinion of this Court filed this day, the Court denies a certificate of appealability and dismisses the appeal.

/s/ Patricia S. Connor
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

CHRISTOPHER RONALD PILENZO,

Petitioner,

v. Civil Action No. 3:01CV365

RONALD ANGELONE,

Respondent.

[Entered: October 25, 2001]

ORDER

In accordance with the accompanying Memorandum Opinion, it is hereby ORDERED that:

1. The motion to dismiss is GRANTED.
2. The petition for a writ of habeas corpus is DENIED.
3. The action is DISMISSED.

Pilenzo is advised he had the right to appeal the decision of the Court. Should he wish to do so, written notice of appeal must be filed with the Clerk of the Court within thirty (30) days of the date of entry hereof. Failure to file a written notice of appeal may result in the loss of the right to appeal.

Let the Clerk of Court send a copy of the Memorandum and Order to Pilenzo and counsel of record.

It is so ORDERED.

\s\ Richard L. Williams
UNITED STATES DISTRICT JUDGE

Richmond, Virginia
Date Oct 25, 2001

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

CHRISTOPHER RONALD PILENZO,

Petitioner,

v. Civil Action No. 3:01CV365

RONALD ANGELONE,

Respondent.

[Entered: October 25, 2001]

MEMORANDUM

Petitioner, Christopher Pilenzo, a Virginia state inmate, by counsel, brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Angelone has moved to dismiss on the grounds that the petition is barred by the one year statute of limitations governing federal habeas petitions. Jurisdiction is appropriate pursuant to 28 U.S.C. § 2254.

I. LIMITATIONS PERIOD FOR FEDERAL HABEAS RELIEF

Section 101 of the Antiterrorism and Effective Death Penalty Act ("ADEPA") amended 28 U.S.C. § 2244 to establish a one year period of limitation for the filing of a petition for writ of habeas corpus by a person in custody pursuant to the judgment of a state court. Specifically, 28 U.S.C. § 2244(d) now reads:

(1) A one year period of limitation shall apply to an application for a writ of habeas corpus by a person in state custody pursuant to the judgment of a State court. The limitation period shall run from the latest of - -

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review.

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

II. PROCEDURAL HISTORY

Pilzeno pled guilty to one count of felony murder in the Circuit Court for the County of Prince William ("Circuit Court"). The murder stemmed from Pilenzo's physical abuse of his girlfriend's 20 month old son. Pilenzo acknowledged that by pleading guilty he waived any right to appeal and faced up to twenty-year sentence. On April 26, 1996, the Circuit Court sentenced Pilenzo to twenty years of imprisonment. The Circuit Court suspended five years of that sentence.

Pilenzo filed a pro se notice of appeal. Pilenzo was subsequently appointed counsel to represent him on appeal. Appointed counsel failed to file a timely petition for appeal, therefore the petition for appeal was dismissed by the Court of Appeals of Virginia on December 16, 1996.

More than two years later, on June 22, 1999, Pilenzo, by counsel, filed a petition for a writ of habeas corpus with the Circuit Court. The Circuit Court denied the petition, and Pilenzo appealed to the Supreme Court of Virginia. On June 13, 2000, the Supreme Court of Virginia denied Pilenzo's petition for an appeal.

Three-hundred and fifty-nine days later, on June 6, 2001, Pilenzo filed his S 2254 petition for a writ of habeas corpus with this Court.

III. TIMELINESS OF PILENZO'S PETITION

Pilenzo's conviction became final, at the latest, on January 15, 1997. See Va. Sup. Ct. R. 5:14 (requiring notice of appeal from decision of the Court of Appeals of Virginia to be filed within thirty days); see Harris v. Hutchinson, 209 F.3d 325, 3233 n.l (4th Cir. 2000)(noting the statue of limitation commences upon the expiration of the time for seeking further direct review).

Thus, Pilenzo had until January 15, 1998, to file his federal petition for a writ of habeas corpus. Pilenzo failed to file any petition for a writ of habeas corpus, state or federal, by that date. Hence Pilenzo's federal habeas corpus petition is barred by the statute of limitations.

Pilenzo contends that the Court should equitably toll the limitation period because he was ignorant of his right to pursue state or federal habeas relief until he contacted an attorney. Such purported ignorance does not entitle Pilenzo to invoke the doctrine of equitable tolling.

> Equitable tolling is available only in 'those rare instances where--due to circumstances external to the party's own conduct--it would be unconscionable to enforce the limitation period against the party and gross injustice would result.' It is appropriate when, but only when, 'extraordinary circumstances beyond [the petitioner's] control prevented him from complying with the statutory time limit.'

Spencer v. Sutton, 239 F.3d 626, 630 (4th Cir. 2001) (quoting Harris v. Hutchinson, 209 F.3d 325, 330 (4th Cir. 2000)). Thus, Pilenzo must demonstrate that notwithstanding "reasonable diligence in investigating and bringing his claims", Miller v. New Jersey State Department of Corrections, 145 F.3d 616, 618-619 (3rd Cir. 1998), there existed "some other extraordinary circumstance beyond his control that prevented him from complying-with the statutory time limit." Harris, 209 F.3d at 330. "Ignorance is not bliss when it come to the law, and this Court will not reward a prisoner who waited so long to determine his rights in the [state and] federal system." See Furr v. Robinson, 3:99cv666, 2000 WL 152147 at *2-3 (E.D. Va. Jan. 13, 2000).

Next, Pilenzo suggests that tolling is appropriate because the delay in filing the federal petition is attributable to state counsel's failure to perfect his direct appeal. Pilenzo fails to explain the factual and legal link between the termination of an appeal (which he waived as part of his plea) and the long delay in filing the present federal petition. Certainly, state appellate counsel cannot be blamed for the three hundred and fifty-nine days that elapsed from the completion of the state habeas proceedings and the filing of federal petition for a writ of habeas corpus. Pilenzo's request to toll the limitation period is denied.

The motion to dismiss will be granted. The petition for a writ of habeas corpus will be denied. The action will be dismissed.

An appropriate Order shall issue.

\s\ Richard L. Williams
UNITED STATES DISTRICT JUDGE

Richmond, Virginia
Date Oct 25, 2001

OFFICE OF THE CLERK
OF CIRCUIT COURT
Prince William County
Cities of Manassas and Manassas Park
Virginia

David C. Mabie
Clerk of the Court

Wendy Jones
Chief Deputy

9311 Lee Avenue
Manassas, Virginia 20110
(703) 192-6015
Metro (703) 631-1703
FAX (703) 792-4721

July 6, 1999

Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219

Re: Christopher Ronald Pilenzo
vs.
Ronald Angelone, Director
Virginia Department of Corrections
LA49501

Forwarded herewith is a certified copy of an order entered by the Honorable Herman A. Whisenant, Jr., on June 30, 1999, ordering the Attorney General of Virginia to respond within forty-five (45) days of June 30, 1999, to the petition for a writ of habeas corpus, a copy of which is also enclosed.

Very truly yours,
Deborah S. Sawyer
Deputy Clerk
Supervisor, Civil Division

Enclosures as stated

cc:. Ned M. Mikula, Counsel for Petitioner
Ronald Angelone, Director
Virginia Department of Corrections, Respondent

VIRGINIA:

IN THE CIRCUIT COURT OF
PRINCE WILLIAM COUNTY

CHRISTOPHER RONALD PILENZO
Petitioner

LAW NO. 49501

RONALD ANGELONE, DIRECTOR
VIRGINIA DEPARTMENT OF CORRECTIONS
Respondent

ORDER TO ANSWER

This Court having received a petition for a writ of habeas corpus from CHRISTOPHER RONALD PILENZO, by counsel Ned M. Mikula, it is ORDERED that the same be filed, said petition having been sworn to by the petitioner.

It is ORDERED that the Attorney General of Virginia shall file an answer to this proceeding within forty-five (45) days of the date of this order.

It is further ORDERED that the Clerk of this Court shall certify copies of this order to counsel for the petitioner, the respondent, and the Attorney General of Virginia.

ENTERED this 30th day of June 1999.

VIRGINIA:

IN THE CIRCUIT COURT OF
PRINCE WILLIAM COUNTY

CHRISTOPHER RONALD PILENZO,
No. 236273,
Petitioner,

v. Law No. 49501

DIRECTOR, VIRGINIA DEPARTMENT
OF CORRECTIONS,
Respondent.

FINAL ORDER

Upon mature consideration of the petition of Christopher Ronald Pilenzo for a writ of habeas corpus, the motion of the respondent and the authorities cited therein, and a review of the record in the criminal case of Commonwealth v. Pilenzo. which is hereby made a part of the record in this habeas corpus matter, the Court finds for the reasons stated in the Motion to* Dismiss that the petitioner is not entitled to the relief sought.

For the foregoing reasons, the Court is of the opinion that the petition for a writ of habeas corpus should be denied and dismissed; it is, therefore,

ADJUDGED and ORDERED that the petition for a writ of habeas corpus be, and is hereby, denied and dismissed, to which action of this Court the petitioner's exceptions are noted.

The Clerk is directed to forward a certified copy of this Order to Ned M. Mikula, counsel for the petitioner, the respondent, and Kathleen B. Martin, Assistant Attorney General.

Entered this 8th day of October, 1999.

\s\ _____
Judge

I ask for this:

\s\Kathleen B. Martin,
Assistant Attorney General
Counsel for Respondent

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED: May 13, 2002

NO. 01-7949
CA-01-365-3

CHRISTOPHER RONALD PILENZO
Petitioner - Appellant

v.

DIRECTOR OF THE DEPARTMENT OF CORRECTIONS
Respondent - Appellee

ORDER

The appellant has filed a petition for rehearing. The Court denies the petition for rehearing.

For the Court,

/s/ Patricia S. Connor
CLERK

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED: April 9, 2002

NO. 01-7949
CA-01-365-3

CHRISTOPHER RONALD PILENZO
Petitioner - Appellant

v.

DIRECTOR OF THE DEPARTMENT OF CORRECTIONS
Respondent - Appellee

ORDER

The appellant has filed a pro se motion for an extension of time in which to file a petition for rehearing and rehearing en banc.

The Court denies the motion.

For the Court - By Direction

/s/ Patricia S. Connor
CLERK

CASA
REPORT TO THE COURT

TO: The Honorable Judge Wellington

FROM: Charlyn Hasson-Brown, CASA

RE: J 40602-02-00
Martin Zimmerman Age 3 ½
9509 Westmoreland Ave 369-5967
(disconnected)

DATE OF REPORT: December 20, 1995

DATE OF HEARING: December 20,1 995 1:30 pm

PETITIONER: Manassas City Social Services

PARTIES: GAL
Paul Walla 221-2220

Mother's Laura Zimmerman's, Attorney
Tom Sartz 491-1162

Social Worker
Sophia Lenk 361-827

LIST OF CONTACTS:

12/13	Phone	Joyce Miller Maternal Great Aunt	257-1387
12/14	Phone	Ethel Hurdle Maternal Great Grandmother to Martin	330-0321
		Ida Zimmerman Maternal Great Grandmother to Martin	369-5967
12/19	Phone	Tom Scartz Attorney for Laura	491-1162
12/19	Phone	Paul Walla GAL	221-2220
12/19	Phone	Sophia Lenk Social Services	361-8277
12/19	Office	Nancy Sickel Records Mgmnt. Spec.	791-7335
12/19	Office	Clerk of Courts Family Courts	
12/19	Office	General Dist. Ct Public Access Compt.	

Discovery Addendum to
December 12, 1995 CASA report

Concerning Frank and Ida Zimmerman, temporary custodians of Martin

Frank and Ida Zimmerman were found guilty in 1991 in family court for failure to send a child to school. In January of 1992, another complaint of neglect was filed with DSS. Three more counts of failure to send children to school were in the courts. These charges were dismissed in March. School records reflect that three of the four children of Frank and Ida did not complete their high *school* educations. One is still in school. The records reflect erratic attendance by the children resulting in many automatic withdrawals from 15 consecutive days absent. Example: Laura Zimmerman, Margin's mother, 1987-1988, of 181 days enrolled, 81 absences. The children appeared to have been moved often and been temporarily in many school systems. There were some grades repeated apparently as a result of poor attendance and poor grades.

Concerning the persons residing (and Laura) with Martin In the Zimmerman home.

Steven, Jason and Laura Zimmerman all have juvenile criminal records in Prince William County. The nature of these records is not known due to privacy laws. A cursory review of adult criminal records revealed Steven Zimmerman has a DIP conviction in District Court. Nothing was found on Frank, Jr. under the name as given.

Summary

If the goal of the court is to keep Martin temporarily safe from physical abuse and to have him reside where he is loved, then I maintain that he would be safe and loved in his grandparents, Frank and Ida Zimmerman's, care. Martin may make a quicker Psychological recovery with people with whom he is bonded. If the goal of the court is to protect a potential murder witness who will be four years old next month, there may be dangers inherent in Martin residing in a busy household of seven or eight adults along with two children. Court records and school history appear to indicate there are few restrictions and apparent disregard for the law. Would a protective order be followed in such a way that Martin would be safe from any potential danger? If the goal of the court is to give the child an opportunity to live in a stable environment where he has an opportunity to achieve a normal, happy, well adjusted life complete with education and the hope of a good future, then based on the frequent moves, the court records and school history of the Zimmerman family, this may not be the right custodial situation.

Conclusion

If Martin stays with the Zimmermans;

- They should not be allowed to easily move with the child out of the courts supervision.
- The following of any protective order should be strictly adhered to and supervised. Laura Zimmerman should not have access to Martin without another adult present. Violations should result in removal for Martin's safety.

- The criminal records of anyone residing with Martin should be reviewed in Prince William and any other counties in which the family has lived to determine if Martin is in any potential danger from another source.
- I would concur with counsel that Martin should receive therapy and be enrolled in a program such as .Headstart. This would not only help him deal with the death of his brother and the other traumas concerning his own safety at the hands of adults but would also allow him to develop and learn to deal with his own physical aggression. As stated by counsel, it would also serve as a check on the order.

REPORT OF INVESTIGATION

KEVIN BRYANT ZIMMERMAN - VICTIM
LAURA ANN ZIMMERMAN - SUSPECT
ABUSE AND NEGLECT OF CHILDREN - 18.2 371.1
CASE #96-042

* * *

Investigation Conducted by
Stephen B. Copeland, Wellington Investigations, Inc.
Manassas, Virginia
April 11, 1996- July 1, 1996

CONFIDENTIAL

Case #96-042

SUBJECT: CHILD ABUSE - 18.2-371.1
VICTIM: Kevin Bryant Zimmerman
SUSPECT: Laura Ann Zimmerman
Date of Death: August 28, 1995

NARRATIVE OF OFFENSE

Background

On Monday, August 28, 1995, at 1:18 am., an emergency call was received by the Manassas Police Department reporting that a 20 month old child was choking on milk. That call was placed by Laura Zimmerman. The 20 month old child was her son, Kevin Bryant Zimmerman, the victim. She reported that her boyfriend was attempting CPR on the child at that time. Subsequently, the child was transported to the Prince William Hospital after failed efforts by Christopher Pilenzo, the boyfriend, to do CPR on the child. The victim was pronounced dead at 1:48 a .m. Dr. John Cary, who signed the death certificate, noted the presence of multiple other injuries of varying age on the victim at the time of death. An autopsy examination performed by Medical Examiner Dr. James C. Beyer, concluded the cause of death was due to closed head injury secondary to blunt force trauma *to* the head and face. He noted multiple contusions over the victim's body of varying ages ranging from reddish blue to tannish brown in color. Subsequent investigation by Detectives W. A. Goodman and W. E. Chittenden of the Manassas Police Department

resulted in the indictment and conviction of Christopher Pilenzo in the death of the victim (Felony Murder/20 year sentence.) Laura Zimmerman was not named as a suspect or charged in the victim's death.

Evidence of Laura Zimmerman's Neglect of Her Children in violation of 18 2-371 1 (Code of VA)

In *Lester v. Commonwealth*, No. 0538-89-1 (Ct. of Appeals, June 12, 1990), the Virginia Court of Appeals said, "It is the duty of a parent to actively monitor their child's health and well-being ... the statute mandates that a parent or custodian may not stand idle while the child's life or health is seriously threatened. The statute imposes upon the parent the duty to make herself aware of her child's physical and mental condition and to actively monitor his health and well-being in order *to* insure his safety." Through further investigation there is probable cause to conclude that Laura Zimmerman had knowledge of the victim's abuse at least two weeks prior to his death and thereby failed or refused to provide the necessary care for the victim's health as required by the statute.

Laura Zimmerman had met Christopher Pilenzo in April 1995 and they had become romantically involved with each other during that period. At the time they met, Pilenzo was attempting to start a computer consulting business in Manassas and had rented a commercial condominium at 9822 Prince William Street, Manassas, VA. He had fashioned a small living area in the warehouse portion of the condo and it was decided that Laura and her two small children, Kevin, age 20 months, and Marty, age 3,

would move into to the condo with Chris. Previously, Laura and her children had lived with her parents, Frank and Ida Zimmerman, on Westmoreland St., Manassas, VA. This was *to* be the first time Laura and her two children would live on their own away from her parents home. Chris Pilenzo insists that Ida Zimmerman encouraged him to take Laura and her two children with him when he moved into his condominium. Witnesses who own neighboring businesses reported that Laura and her children spent most of their time in the condo. The children were rarely seen outside. When they did leave, they all left together, Laura, Chris, and the children. Although investigation failed to document any incidents where Laura had physically abused her children prior to becoming involved with Pilenzo, she had been observed publicly with Kevin when he appeared to be badly bruised about the face and head. She was observed with Kevin at a bowling lanes in Manassas one evening where she was seen holding him in a blanket rapped to his neck. His face was observed bruised at that time.

These observations are corroborated by the findings of the pathologist during the post mortuum examination of Kevin's body, where tannish-brownish bruises were found on his body (tannish-brownish bruises are 10-14 days old.) Since the victims death, Laura Zimmerman has stated that she participated in and approved of keeping the victim in a "play pen of tires" at the warehouse.

Evidence of Laura Zimmerman's Abusive Behavior Towards Her Children

During this investigation, witnesses were interviewed who will testify that Laura Zimmerman has been physically abusive to her children. There is eye witness accounts of how Laura had been observed picking up Kevin as an infant, like a rag doll, by the arm and dropping him on the floor, to an incident where she was observed actually pitching Kevin our of the kitchen door onto a stoop. Since Kevin's death, there was an eye witness account of Mary Zimmerman being picked up under his armpits and being slammed against a wall. This incident occurred in the Zimmerman residence in Price William County between March 26, 1996 & April 1, 1996.

CONFIDENTIAL

Case #96-042

SUBJECT: WRONGFUL DEATH ACTION
VICTIM: Kevin Bryant Zimmerman
Date of Death: August 28, 1995

WITNESS LIST

The following witnesses are prepared to testify to their statements:

1. Joyce A. Miller - One of Ida's sisters who took the Zimmerman family into her home from September 1994 until January 1995 and had opportunities to make daily observations of how Laura was as a mother. In her interview she has cited a number a specific cases where Laura shows a propensity to be abusive. Ms. Miller was not interviewed by the investigating authorities.

2. Susan Curley - Another of Ida's sisters who lived with Ida and her family for a short time and made daily observations on the way Laura treated her children. She also observed abnormal bruising on Kevin's face and questioned Laura and Ida about it. Ms. Curley was not interviewed by the investigation authorities.

3. Ms. Susan Sortzi - A former neighbor of the Zimmermans, Ms. Sortzi can give testimony about the overall home environment Laura and her children lived in at the time she met Chris Pilenzo. Ms. Sortzi also observed an unexplained human bite mark on

Marty Zimmerman's forehead, which was later reported to the Department of Social Services (DSS). Ms. Sortzi was not interviewed by the investigating authorities.

4. Ms. Kriss Krass - A former neighbor of the Zimmerman, Ms. Krass described several times when she unexpectedly found the Zimmerman children playing in the street unattended as she approached in her school bus. She also observed the bite mark on Marty and reported to the DSS. Ms. Krass was not interviewed by the investigating authorities.

5. Ms. Mary Davis - A former neighbor of the Zimmermans, Ms. Davis can give testimony to the general family environment where Kevin and Marty were being raised. She also was not interviewed by the investigating authorities.

6. Louis lean Gilbert - Miss Gilbert is a former acquaintance of Laura who was present at the bowling alley when Laura brought Kevin to the lanes with large bruises on his face. She was not interviewed by the investigating authorities.

7. Buddy Flynn - A workman who works in the building across from where Chris and Laura lived during the final weeks of Kevin's life. He can testify to how Laura spent her days, that he never saw Laura without her children and most of the time she spent with them in the closed up building. He was not interviewed by the investigating authorities.

8. Gary Martin - Shop owner and employer of Buddy Flynn, Ms. Martin verifies statements and observations _ made by Mr. Flynn. He also was not interviewed by the investigating authorities.

9. Ronnie Angles. Air. - A frequent patron of the bowling lanes where Chris and Laura bowled, Angles was present when Chris and Laura talked about an incident where they put Kevin and Marty in the trunk of Chris's Mustang and drove around with the lock in it. Angles, who admitted just getting out of jail himself (shoplifting charge) should be taken seriously regarding this allegation. He was not interviewed by the investigation authorities.

10. Carrie Mauck - A family friend of the Zimmermans, Miss Mauck dates one of Laura's cousins and can give testimony to seeing serious bruises on Kevin's face several weeks prior to his death. She has not been interviewed by the investigation authorities.

11. Mrs. Sharon L. Cassiday - Had an extensive conversation with Laura Zimmerman in March 1996 where Laura talked about how she turned Chris Pilenzo in to the police because she was mad at him for leaving her in Warranton without transportation. Laura also told Mrs. Cassiday about how she and Chris used to place Kevin in the stack of tires and use them as a play pen.

12. Shawn Michael Cassidav - Mrs. Sharon Cassiday's younger son, who witnessed a display of Laura's anger and abuse toward Marty Zimmerman where she

picked up Marty by the armpits and slammed him up against the wall in the Zimmerman house.

13. Barry Cassidav - Mrs. Sharon Cassiday's older son who was present with Shawn Michael Cassiday and observed Laura's physical abuse towards Marty.

14. Dawn Michaelle Johnston - Ms. Johnston is a former co-worker of Laura Zimmerman. Her interview includes a conversation with Laura where Laura admitted she know about Chris putting Kevin and Marty in the large wardrobe box as punishment. She also said Laura was afraid of being arrested and actually head out for several days after Chris gave his T.V. interview from the ADC.

15. Christopher Pilenzo - Extensive interview conducted in the Prince William County - Manassas Adult Detention Center, after his sentencing where he stated he observed Laura beating Kevin with a belt as well as made characterizations based on his observations of how the Zimmerman family is violent by nature.

CONFIDENTIAL

Case #96-042

SUBJECT: WRONGFUL DEATH ACTION
VICTIM: Kevin Bryant Zimmerman
Date of Death: August 28, 1995

INTERVIEW OF JOYCE A. MILLER

Ms. Joyce A. Miller, 141 Polk Drive, Manassas Park, VA 22111, was interviewed on April 12, 1996. Ms. Miller is a great aunt of the Victim. She was interviewed at the residence of Ms. Pauline Lane, 7756 Quail Run, Manassas, VA 22110.

Ms. Miller stated that between September 1994 and January 1995, the Zimmerman family (her sister Ida, her husband Frank, their children Frankie, Jeff, Stephen and Laura, and Laura's two young children, Marty and the Victim) lived with her family. At the time they resided at 67 Royal Lane, #3, Front Royal, VA. During this period of time, Ms. Miller had daily contact with Laura and many opportunities to observe how she treated her children. She said Laura was the type of person who had unrealistic expectations of her children. [She said Laura had a tendency to be abusive towards Kevin, however, she never saw Laura mistreat Marty, her other child. Ms. Miller recalled an instance were Laura removed Kevin's food at meal time for misbehavior using that as punishment. She said another time while they were in the living room of their small apartment, Kevin began to get fussy and misbehave and would not eat. She said it appear like he did not feel good. Ms. Miller said Laura stood Kevin up on his feet and in disgust, she pushed him forward with such force

that it caused him to fall forward on his face on the floor, Although he received no noticeable injuries, Ms. Miller said she told Laura not to ever do that again in her house, that she did not treat her children that way and she would not allow anyone else to treat their children that way in her home. Ms. Miller said Laura's father was present at the time and witnessed the incident but did not intervene or otherwise say anything. Ms. Miller said there were plenty of other times where she had witnessed Laura push Kevin away like she did not want to be bothered with him or actually pick him up by the arm like a doll and throw him across the couch to get him away from her. Ms. Miller said during the time the Zimmermans lived with her family she began to notice that Laura had an extremely bad temper and would through temper tantrums. She also notice how Laura would use her children as a threatening tactic against her mother (Ida) when she could not have her way. She would make threats like she was going to take the children away and they would never be seen again. Ms. Theresa Zanella, one of Ms. Miller's other sisters (and a client), who was present during this interview, stated she observed Laura grab Kevin by the arm and throw him out the back door of her mother's house one afternoon. Theresa was not sure of the exact date but thought it was some time during the warmer months of 1995.

Conversations With Ida Zimmerman Recalled by the Clients During This Interview

Ms. Miller recalled hearing a statement made by Ida Zimmerman sometime around the period of time of the trial where Ida said that on the evening of the

August 27, 1996, that she place her usual telephone call to the kids at Chris's business where they were living. Ida usually called them most every night around bed time to say good night to them, according to Ms. Miller. However, on this particularly evening, according to Ms. Miller, just after Ida finished talking Marty, Laura's the older. child, she asked Marty if she could speak to "Kevie".

Marty reportedly said that Kevie could not come to the phone because he was being punished. The next call she got later that night was to come to the hospital emergency room.

Another conversation with Ida Zimmerman recalled by Ms. Miller took place around September 7, 1995 after Laura returned from her 5 day disappearance following Kevin's death. Ms. Miller said when Ida told young Marty, whom she was keeping, that "Mommy" was coming home, she said Marty expressed fear and did not want to see her, Ida said at first she thought Marty was frightened because he thought it was Chris and she said, "No it's Mommy". Ida said Marty went into a panic and went and tried to hid.

Joyce Miller also stated during this interview, that in the recent summer months preceding his death, Laura was dressing him in long sleeved tops and bottoms, whereas previously, it was common to see him in nothing but a diaper. After his death, it occurred to her that Laura was covering up bruises on Kevin's body.

The last time Ms. Miller said she saw Kevin was about one month before he died.

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Stephen B. Copeland

CONFIDENTIAL

Case #96-042

SUBJECT: WRONGFUL DEATH ACTION
VICTIM: Kevin Bryant Zimmerman
Date of Death: August 28, 1995

INTERVIEW OF SUSAN CURLEY

On April 17, 1996, Ms. Susan Curley, 1245 Strasburg Road, Front Royal, VA was interviewed. Ms. Curley is a sister of Ida Zimmerman and is a client in this matter. The interview took place in the home of Ms. Pauline Lane during a meeting with Mr. Louis Koutoulakos and Mr. Blair Howard, attorneys for Christopher Pilenzo. Mr. Koutoulakos and Mr. Howard were seeking any information that they said would bring pressure to bare on the Commonwealth's Attorney to seek indictments against Laura Zimmerman. During this interview Ms. Curley related observations of bruises on Kevin as well as other specific information about the manner in which Kevin and Marty were treated by Laura Zimmerman and Christopher Pilenzo.

Ms. Curley advised that during a five week period beginning in August 1994, Ida and Frank Zimmerman and the family, including Laura and her two children, lived temporarily with the Curley family in Front Royal. When asked what kind of mother Laura was towards her children, Ms. Curley said in her opinion Kevin was generally being kept by the grand parents. Kevin usually slept with the grand father (Frank) as Laura worked midnights. She said Laura

generally took care of the meals and bathing but that was about it. When asked about observing any types of bruises on either of Laura's children, Ms. Curley stated the only bruises she ever saw on the kids were what she termed as "normal bruises" from play. Bruises on the hard bony areas, none which she termed as suspicious. When asked about acts of anger displayed by Laura, Ms. Curley stated that Laura did have a temper and mostly expressed it by screaming. When asked if she had ever observed Laura strike Kevin, Ms. Curley remarked that she had seen Laura slap Kevin on the backsides when he would misbehave, hard enough to knock him down. She said there were lots of times when Ida and Frank would simply remove Kevin from her presence when she got angry. Ms. Curley further explained that apparently Ida and Frank may not have trusted Laura around Kevin when she got angry, feeling that she might have a propensity to loose her temper with Kevin.

Unexplainable Bruises on Kevin - Ms. Curley said that because of her job in Manassas, that between July 4, 1995 up until the time of Kevin's death, she stayed with the Zimmermans at their Westmoreland Street residence during the week and traveled back and forth to her home in Front Royal on the weekends. She said it was during this period of time that she began seeing suspicious looking bruises on Kevin. (COMMENT: During this time Laura and her children was living with -Chris in his business establishment at 9288 Prince William St.) Ms. Curley said when she first saw the bruises she asked Laura and Chris about them. Chris's reply was something like, "He did it at the park ...he did it going down the sliding board," or Laura

would say, "He bounces on the bed." Ms. Curley said she doubted any of that to be the truth because of the size and location of the bruises on Kevin's face. She said it just did not seem like those kinds of bruises would come from falling off a sliding board or bed. She said there were no scratches or scrapes which you would normally associate with such spills.

Kevin and Marty Being Put in Car Trunk - Ms. Curley advised there was another incident during the time period she was staying at the Zimmermans that she was told be a Ronny Angles, Jr., who bowled with Chris and Laura, that Chris had made statements to him that he (Chris) and Laura had placed Marty and Kevin in the trunk of Chris's Mustang as punishment for their misbehavior. Ms. Curley said as soon has she was told that, she went to Ida and told her and said she was going to call social services. She said Ida told her she would make the report herself. Ms. Curley said the following Monday she asked Ida if she had made the call and was told that she had. She does not know whether or not Ida ever reported the incident to social services.

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Stephen B. Copeland

CONFIDENTIAL

Case #96-042

SUBJECT: WRONGFUL DEATH ACTION
VICTIM: Kevin Bryant Zimmerman
Date of Death: August 28, 1995

INTERVIEW OF MS. SUSAN SORTZI, FORMER FAMILY NEIGHBOR

On April 17, 1996, at 4:30 p.m., Ms. Susan Sortzi, 9511 Westmoreland Street, Manassas, VA 22110, 703-361-5275, was interviewed. Ms. Sortzi resides next door to the house that was previously rented by the Zimmerman family at 9507 Westmoreland Street. She could not recall the exact dates they lived there but it was during the last part of the 1995, less than a year total. Ms. Sortzi is a homemaker and keeps children during the day. She advised although she was not acquainted with the Zimmerman family or Laura Zimmerman, Laura's children had been in her home or in her yard on numerous occassions. Ms. Sortzi said generally, the children were always real nasty in appearence. It was nothing to see Marty, the 3 year old, outside running up and down the sidewalk as late as 11 p.m. at night. She said it always seemed there were 8 to 10 persons living in the house at any given time with three to four cars parked out front. Although she did not know Ida, Ms. Sortzi referred to her as a woman who "had the mouth of a sailor", meaning she could be heard using profanity on a regular basis. She said she never saw Laura pick up her children or otherwise play with them like you would normally see a mother

do. On the other hand, Ms. Sortiz said she never saw Laura be physically abusive to the kids, but there were numerous time when she would hear Laura yell at them and use profanity towards them.

Ms. Sortiz said on one ocassion, she recalled observing a very nasty bite mark on the forehead of Marty, the three year old. She said from her experience as a mother she knew the bite mark was human because of its shape. Being very concerned about Marty, she asked him about it but he would not say how it happened. (COMMENT: it was later revealed by Ida Zimmerman one of her sons did it.) Ms. Sortiz said after seeing the bite, she was so concerned about Marty and Kevin's welfare, that she called her neighbor, Kris Krass to come look at the bite and help her decide what action to take. Ms. Krass ended up reporting the incident to the Prince William County Department of Social Services. Ms. Sortiz said she did not know what action Social Services took but she was never contacted by that agency.

Ms: Sortiz also said during this interivew that when she read the press reports of Kevin's death and of Kevin being protrayed as a rough child as a reason for the bruises on his body, she that very odd, because she had always known Kevin as a very timid little boy. She said he was so timid that almost anything would frighten him. Even being placed in a toddler swiming pool would frighten Kevin, she said.

At the conclusion of her interview, I ask her Ms. Sortiz in her opinion, as a mother and caretaker of small children, if she felt that Marty and Kevin were living in a proper home environment. Her answer was no. Ms. Sortiz said she was willing to testify to what she had personally observed in this matter.

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Stephen B. Copeland

CONFIDENTIAL

Case #96-042

SUBJECT: WRONGFUL DEATH ACTION
VICTIM: Kevin Bryant Zimmerman
Date of Death: August 28, 1995

INTERVIEW OF MS. KRIS KRASS

On April 17, 1996, at 5:30 p.m., Ms. Kris Krass, 8153 Claremont Street, Manassas, VA 22110, 703-369-3037, was interviewed. She is a school bus driver for the Prince William County School System.

Ms. Krass advised that she was not personally acquainted with the Zimmerman family but had direct involvement with the Zimmerman children (Kevin and Marty) on a number of occasions. She said one afternoon, she could not remember the date, her friend Susan Sortzi called her to come up to her house and look at an injury on Marty Zimmerman's forehead. She said when she looked at the laceration, it was very obvious that it was a human bite. She and Susan discussed what action they should take and it was decided that Ms. Krass would report the incident to social services. Since it was around 4 p.m in. the afternoon,- Ms. Krass contacted the Prince William County Department of Social Services the next morning. She said although she was never interviewed by social serves or the police department, she believes she observed a social services vehicle parked in front of the Zimmerman residence several days later.

During the interview, Ms. Krass related several other experiences she has had with Laura Zimmerman's children which she considered to be potentially deadly. Ms. Krass related that her afternoon school bus route begins at 1:40 p.m. daily. She said one afternoon as she left her residence and rounded the curve towards the Zimmerman residence, she saw Marty and Kevin playing in the middle of Westmoreland Street. As always, there were no adults present. Ms. Krass said she stopped her school bus, sounded the horn several times but no one came from the Zimmerman house. She said she finally got out of her bus, picked up the little bicycle Marty was on, picked Marty and Kevin and placed them on the sidewalk and told them to stay there. She said all the while, no one came from the Zimmerman residence to see what was going on.

On another occasion, about one week later, Ms. Krass said she rounded the curve at Westmoreland in her school bus, and again found Kevin and Marty playing in the street. She said this time Kevin was actually-sitting in the middle of Westmoreland. Again, Ms. Krass said she sounded her school bus horn several times. This time, Laura appeared at the front door of the residence and started to scream at boys. She was heard saying, "Get your f 'n a- out of the f 'n street". Ms. Krass said the children did get out of the street, but all Laura did was yell from the front door and she never did come outside to get the children out of the street.

In October of 1995, shortly before the Zimrnerman family was evicted form their residence, Ms. Krass said she would sometimes see Marty sitting on the curb in front of her house, with his bicycle, just like his mind was a million miles away. He looked very lonely. She said, "I felt real sorry for him".

Stephen B. Copeland

CONFIDENTIAL

Case #96-042

SUBJECT: WRONGFUL DEATH ACTION
VICTIM: Kevin Bryant Zimmerman
Date of Death: August 28, 1995

INTERVIEW OF MRS. MARY DAVIS, FORMER ZIMMERMAN FAMILY NEIGHBOR

On April 17, 1996, at 4:48 p.m., Mrs. Mary Davis, 9507 Westmoreland Street, Manassas, VA 22110, 703-368-9007, was interviewed. She is retired and has five grand children.

Mrs. Davis said during the short time the Zimmermans rented the house next door she never became acquainted with them. She said there was constant noise, yelling, screaming, profanity, etc., coming from the house. She said there must have been nine or ten people living in the house at any given time and it was nothing for them to be out in the yard making noise and drinking and carrying on until 1 am or 2 am on a regular basis. She said it was so bad that the noise kept her and her husband awake at nights. Finally, she said she and Ms. Sortzi complained to the landlord. She said at the time of Kevin's death, she and her husband were in Myrtle Beach and were not aware what went on. Mrs. Davis said never noticed any physical actions taken towards the children by anyone, although it was nothing to see the little kids out in the yard until late in the evening, 10 p.m to 11 p.m. at night.

Mrs. Davis said she could not imagine that Laura as a mother, as not being aware of the bruises on Kevin's body and exactly how and when they got there.

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Stephen B. Copeland

CONFIDENTIAL

Case #96-042

SUBJECT: WRONGFUL DEATH ACTION
VICTIM: Kevin Bryant Zimmerman
Date of Death: August 28, 1995

INTERVIEW OF LOIS JEAN GILBERT

On April 18, 1996, Ms. Lois Jean Gilbert, 27 Castle Court, Stafford, VA 22554, 540-659-7449, was interviewed reference the captioned case. The interview took place at the Bowl America, Inc., Manassas Shopping Center, Manassas, VA 22110, 703-368-2161, where Ms. Gilbert is employed as a waitress.

Ms. Gilbert stated she has known Laura Zimmerman for approximately 1 year and only was acquainted with her through the bowling lanes. She said Laura is a regular bowler, who bowled in a league on Tuesday evenings. When asked if she had ever seen Laura in the company of her children, Ms. Gilbert advised that she had seen Laura with Kevin once. The date in question was Tuesday, August 22, 1995, one week before Kevin died. Ms. Gilbert said: on that evening Laura brought Kevin to the bowling lanes between 8:30 p.m. and 9 p.m. She said Laura had Kevin wrapped in a blanket and was holding him while she waited for a niece to come up and watch him while she bowled on her league which started at 9 p.m. Ms. Gilbert said immediately upon seeing Kevin, she noticed large bruises all over his face. She said the bruises were yellowish, tannish in color and looked old

to her. "They literally covered Kevin's cheeks, forehead and jaw area", she said. She said although the area under his eyes was dark, Kevin did not appear to have black eyes. Ms. Gilbert said when she asked Laura what happened, she replied, "We took Kevin to the park today and he fell off the swing." When asked if she noticed any bruises on other parts of Kevin's body, Ms. Gilbert advised that the blanket Kevin was wrapped in covered all of his body except his face. Ms. Gilbert said once Laura walked over towards the alleys, she commented to her mother and another waitress who also observed Kevin's bruises, that there was no way that those bruises were done by falling off a swing. She said, "Kids get bruises, but not like that." The other witnesses who observed Kevin's bruises that evening were, Ms. Shirley A. Melvin (Ms. Gilbert's mother), 27 Castle Court, Stafford, VA 22554, 540-659-7449 and Ms. Lucie Fowler, a waitress at the bowling lanes. Ms. Gilbert advised she and her mother are willing to testify to what they observed that evening. (COMMENT: None of these witnesses were interviewed by the Manassas City Police Department.)

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Stephen B. Copeland

CONFIDENTIAL

Case #96-042

SUBJECT: WRONGFUL DEATH ACTION
VICTIM: Kevin Bryant Zimmerman
Date of Death: August 28, 1995

INTERVIEW OF BUDDY FLYNN

On April 19, 1996, at 10:10 a.m., Mr. *Buddy* Flynn, 14846 Edman Cr., Centreville, -VA 22020, 703-266-7142, was interviewed reference to the captioned case. Mr. Flynn is a furniture repairman employed by Martin's Leather Furniture Restoration, 9288 Prince William Street, #107, Manassas, VA 22110. This business establishment is located directly across from the building where Chris Pilenzo and Laura Zimmerman were living her children at the time of Kevin Zimmerman's death.

Since Mr. Flynn daily worked within 50 feet of where Kevin died and had regular opportunities to observe Pilenzo's office front, he was interviewed in regards to any observations he might have made concerning how Laura and the children *would* typically spent their day and what might have been their routine. He was also questioned about any unusual treatment he might have observed relating to the children. Flynn said most of the time it was quite over there. He said he understood that most of Pilenzo's work was at night and that they stayed up very late and would sleep during the day. From his observations Flynn advised that Laura would generally spent most of the day inside the unit with the children except for

short periods of time when they would all leave together in the Mustang. He said he could never remember a time when she left by herself that she always had the children with her when she left. Flynn also said he never saw anything unusual about the way the children were being treated. Flynn said Chris and Laura would keep the door locked and the blinds pulled all of the time so it was difficult to see what was going on inside their unit.

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Stephen B. Copeland

CONFIDENTIAL

Case #96-042

SUBJECT: WRONGFUL DEATH ACTION
VICTIM: Kevin Bryant Zimmerman
Date of Death: August 28, 1995

INTERVIEW OF GARY MARTIN

On April 24, 1996, at 3:00 p.m., Mr. Gary Martin, owner of Martin's Leather Furniture Restoration, 9288 Prince William Street, #107, Manassas, VA 22110, 703-369-7939, was interviewed. Mr. Martin was basically asked the same questions as Buddy Flynn was previously asked.

Martin stated as best as he could recall, Chris Pilenzo first occupied the unit at #103 sometime in late April 1995. He recalled talking. with him once around that time. Other than that, Pilenzo kept to himself. In regards to what he observed of their daily routine, Mr. Martin said on a few occasions he would see Chris leave the unit dressed up, probably to make a sales call. Otherwise, he only saw them make short trips and they always had the two children with them. As far as Laura was concerned, Martin said he could never remember a time when he saw her leave in the Mustang alone, that she always had the children with her. In regards to the children playing around the area, Martin said the only time he ever saw them outside was when Chris and Laura were coming or going to the car or unloading items. Otherwise the children were kept in the building.

Mr. Martin recalled that the day after Kevin's death he saw Laura drive up to the edge of the units, set for a minute, and drive off. She did not get out of the car. He never saw her or Chris over there after that day.

Mr. Martin said he never got close enough to the children to observe whether or not they were bruised. He said based on his observations that Laura was either with the kids or with Chris and the kids all of the time, and it appeared to him that Chris was never alone with the children.

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Stephen B. Copeland

CONFIDENTIAL

Case #96-042

SUBJECT: WRONGFUL DEATH ACTION
VICTIM: Kevin Bryant Zimmerman
Date of Death: August 28, 1995

INTERVIEW OF RONNY ANGLES, JR.

On Wednesday, April 24, 1996,. at 8:00 p.m., Mr. Ronny Angles, Jr., 7600 Stuart Court, Manassas, VA 22110, 703-330-0962, was interviewed. The interview took place at Bowl America bowing lanes, Manassas Shopping Center, Manassas, VA. 22110. Mr. Angles, a bowling enthusiast stated he was a bowling partner of Chris Pilenzo and Laura Zimmerman during the period of time immediately preceding the death of Kevin Zimmerman.

Incident Where Kevin and Marty Were Placed in Car Trunk

At the beginning of this interview I informed Ronny that it had come to my attention during my investigation that he was present when Chris Pilenzo allegedly talked about placing Kevin and Marty in the trunk of his Mustang as punishment for misbehavior. Ronny confirmed the allegations and stated he was present at the bowling lanes with Chris and Laura one evening in late July or early August of 1995 when Chris made a statement that he once put Kevin and Marty in the trunk of his Mustang for punishment and rode them around for about 1/2 mile with them in the trunk. He said Laura was present when Chris made the

statement as was Laura's brother, Stephen Zimmerman. Angles said it seemed like Chris was bragging about it.

Bruises Observed on Kevin's Body

Additionally, during this interview, Mr. Angles was asked if he had ever seen bruises on Kevin. His reply was that he had and so had "everybody" at the bowling lanes, at one time or another. The bruises he had seen were on Kevin's arms. He said when he asked Laura about them, she would remark that Kevin either fell off the bed, or fell down. He said the bruises were suspicious looking to him. When asked why he thought Laura wouldn't do anything about Kevin's bruises, Angles said he felt that Laura was afraid of Chris and protected him. Angles also said he had observed bruises on Laura's arms as well, supposedly done by Chris. Angles said he felt that Chris Pilenzo manipulated Laura and her family and took advantage of them. He said Pilenzo always acted like he was better than them. During this interview Angles commented that this was the first time Laura had actually lived away from her mother with her children indicating that may have had some impact on the way the children were treated.

END OF INTERVIEW.

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Stephen B. Copeland

CONFIDENTIAL

Case #96-042

SUBJECT: WRONGFUL DEATH ACTION
VICTIM: Kevin Bryant Zimmerman
Date of Death: August 28, 1995

INTERVIEW OF CARRIE MAUCK

On April 23, 1996, at 9:00 p.m., Ms. Carrie Mauck, 165 Colburn Street, Manassas Park, VA 22111, 703-361-3835, was interviewed. Ms. Mauck is employed as a bank teller at First Virginia Bank, 10420 Portsmouth Rd., Manassas, VA 22110, 703-361-2405, and as a Sales Associate at the Party Company, 10336 Portsmouth Rd., Manassas, VA 22110, 703-368-6310. She was interviewed via telephone.

At the beginning of her interview, Ms. Mauck requested that her name not be revealed publicly regarding this case since she is a close acquaintance of the Zimmerman family. She said she dates Laura's cousin Johnnie Zimmerman and did not want to be in any conflict with the family.

In regards to visible bruises on Kevin's body, Ms. Mauck stated that she did not start seeing bruises until Laura started dating Chris. She said she thought Chris and Laura had dated for about 6 months prior to Kevin's death. Ms. Mauck said that was when bruises started appearing on Kevin. She said during that period of time, with the exception of about 1 month prior to Kevin's death, she was around Chris and Laura regularly at the Zimmerman home. She said it was

about that time that Laura and Chris started staying over at the warehouse. Ms. Mauck said she last saw Kevin about 2 weeks before he died. She said the Zimmerman family was aware of Kevin's bruises.

She some of the bruises were rather large and seemed to be all over his face. She said when Laura was questioned about it she would say they were caused from falling off the bed or at the play ground.

In retrospect, Ms. Mauck said she could not understand how Laura could have allowed Kevin to be beat like that.

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Stephen B. Copeland

CONFIDENTIAL

Case #96-042

SUBJECT: WRONGFUL DEATH ACTION
VICTIM: Kevin Bryant Zimmerman
Date of Death: August 28, 1995

INTERVIEW OF MRS. SHARON L. CASSWAY, SHAWN MICHAEL CASSIDAY, BARRY CASSIDAY

On June 4, 1996, Mrs. Sharon L. Cassiday, her sons, Shawn Michael, and Barry, were interviewed at their residence, 7613 Huron Drive, Haymarket, VA 703-754-3176. Mrs. Cassiday is a retired registered nurse. In addition, she completed three years of law school at the University of Maryland. During this two and one half hour interview, Mrs. Cassiday two sons, Shawn Michael, age 15, and Barry, age 19, and were interviewed. Mrs. Cassiday advised she initially became acquainted with Laura Zimmerman through her daughter's employment at Bull Run Exxon, 13705 Lee Highway, Gainsville, VA. Laura Zimmerman became employed there at the end of January, 1996. At that time her daughter was also an employee.

CONVERSATION WITH LAURA ZIMMERMAN, MARCH 1996.

Mrs. Cassiday related the following conversation she had with Laura Zimmerman that took place at the Exxon station one afternoon about a week before Chris's trial. She could not remember the exact date but it was sometime in mid March of 1995. Everyone at the Exxon station was aware of the case at that time.

Laura Turns Chris Pilenzo In to the Police - Laura told Mrs. Cassiday that the reason she and Chris disappeared shortly after Kevin's death was because they were afraid they were going to be accused of harming Kevin. She said they thought Kevin had died of some natural causes or by chocking on his milk. Laura said they decided to hid out after she was chased down 1-66 by one of her aunt's husbands. They ended up in a motel in Wan-Anton and supposedly only her mother, Ida, knew where they were. Laura said after a while, Chris left the motel, apparently to be with his parents. Shortly after that, his parents came by the motel and picked up Chris's Mustang and Laura was left with no transportation. She said that's when she got angry with Chris's parents so, and in retaliation, she decided to turn Chris in.

Laura said when the Manassas police detectives visited her at the motel, she ended up going back to the police station to give them a statement. (COMMENT: it is not clear whether Laura went with the police officers at that time or was taken later by her mother, which has previously been reported.) Laura told Mrs. Cassiday, that while at the police station, she informed the officers that Chris's driver's license was suspended. Since the officers wanted to talk to Chris, Laura said she volunteered to call Chris to come and get her. She said when Chris arrived, he was immediately arrested for driving on a suspended license. She told Mrs. Cassiday that she later felt bad about turning Chris in and put her car up as collateral to bond him out.

Using The Tires as a Play Pen - During the conversation with Laura, Mrs. Cassiday said there was some discussion about Kevin being placed in the tires. Laura told Mrs. Cassiday that she and Chris did use the tires as a play pen. They would put Kevin in a stack of tires to keep him from messing with the computer equipment in the office. She said when Kevin would climb out, they would stack on another tire to contain him. She said she and her mother were at odds with using a stack of tires as a play pen but she did not see anything wrong with it

CONVERSATION WITH IDA ZIMMERMAN

Mrs. Cassiday advised that sometime during *the* third week of March, 1996, Ida Zimmerman called her at here residence and began discussing Laura's involvement in the case. She said she was taken by complete surprise because she was not acquainted with Mrs. Zimmerman. She said it was ***like*** Ida was trying to convince Mrs. Cassiday that Laura was not guilty of anything and that she was trying to win Mrs. Cassiday over to Laura's side. Mrs. Cassiday said the conversation aroused her interest so much that she later went to the library and researched news articles of the case. What she found was that a lot of what Mrs. Cassiday was saying was verbatim as to her quoted statements in those articles. Mrs. Cassiday said this bothered her greatly because it sounded like Ida had her story down pat.

About Inquiring to Gain Custody of Kevin - During the course of her conversation with Mrs. Cassiday, Ida told her in retrospect that she wished she

had obtained custody of Kevin like she tried to do sometime before his death. Ida said she had called social services about the possibility of obtaining custody of Kevin but was advised it would be highly improbable for her to get custody from Laura, absent any compelling reasons. She told Mrs. Cassiday that when Laura found out about it, she threatened to move away and Ida would never see the kids again if she ever tried that again.

About Receiving Inside Information From the Police - In the course of Mrs. Cassiday's conversation with Ida, she remarked to Mrs. Cassiday that after Chris Pilenzo was arrested, one of the Manassas police detectives would call her and give her advance information about Chris's movements. For instance, she said when Chris was interviewed from his cell by Channel Four News, she received a call in advance from the detective telling her what Chris was going to say. Ida also said she was kept informed of the ongoing plea bargaining taking place between the prosecutors and Chris's lawyers.

Mrs. Cassiday said Ida told her that on the evening of Kevin's death, Laura had been over at her house doing her laundry. She said she was there for about 3 hours and left around 10 p.m. Ida said when she called the warehouse shortly after Laura left, to speak with Marty and Kevin, Laura had not arrived yet and when she asked Marty if she could speak to Kevin, Marty told her that Kevin was being punished.

LAURA ZIMMERMAN'S OBSERVED VIOLENT TEMPER

Mrs Cassidav's Observations - During this interview I asked Mrs. Cassiday and her two sons if they could recall any instances where they observed Laura Zimmerman's display of anger. Mrs. Cassiday recalled an incident at the Exxon station that occurred around the end of February, 1996, when Laura got mad about something and was shouting so loud that Mr. Larry Terry, the manager, could here her in the office trailer located behind the building. Mrs. Cassiday said during that display of anger. Laura came out of the cashier's office slamming the half door so violently that it almost came off its hinges. In another incident, Mrs. Cassiday said the day of Chris Pilenzo's jail interview, Laura called the Cassiday residence to get Mrs. Cassiday's daughter to work in her place that she had to leave work immediately due to a family emergency. (COMMENT: Mrs. Cassiday found out later that the emergency was to go home and watch the interview.) However, her daughter was not able to go up and take over on a moment's notice, and Laura immediately became very angry over the phone, yelling, screaming and using profanity because of the daughter's unwillingness to relieve Laura.

Observations of Shawn Michael Cassidav and Barry Cassiday - Shawn and Barry Cassiday related an incident they both observed that occurred in the Zimmerman residence sometime between March 26 and April 1, 1996. At that time Shawn and Michael, along with Jason Zimmerman, Marty (now about age 4) and Laura, were in the family room playing with

water guns. At some point Marty took a water gum and put it in his mouth and began drinking the water, squirting it in his mouth. Barry said when Laura saw that, she became infuriated and grabbed Marty by the shirt, under the armpits, lifted him up and slammed him against the wall making a loud noise. Shawn demonstrated with a stuffed doll. He said Laura actually lifted him up to her eye level. Using profanity, including the "f word, she told Marty he wasn't supposed to drink out of the water gun. She then put him down and stomped off upstairs leaving Marty on the floor crying.

Citing another incident that also occurred in the Zimmerman's Brentsville home, Barry said one Saturday morning around 8 or 9 a.m. while he was there waiting for Hope (COMMENT: Barry was dating Hope Curley at the time and she was living with the Zimmermans), he witnessed Marty being struck by Laura's brother Jason. He said at the time Jason was apparently asleep on a sofa in the family room and Marty wanted to play. To get Jason's attention, Marty went over and hit Jason in the face with his hand which had a small toy in it. Jason, not moving or opening his eyes, pushed Marty away. Marty apparently took that as play and went back over to Jason and hit him again on the cheek. This time, however, according to Barry; Jason swung his right arm out, still not opening his eyes, and struck Marty across the face so hard that it knocked him about 5 feet across the room to the floor. Marty immediately began crying as if he was hurt. Barry said although he did not see any signs of injury, Laura, who was in the room watching television, barely acknowledged what happened by simply saying

to Marty that he should have left Jason alone. Barry said at no time did Laura make any effort to comfort Marty. Barry said Ids was in the house but not present in the room at the time. This incident occurred somewhere around February 1, 1996, according to Barry.

LAURA ZIMMERMAN REPORTEDLY CONTINUES TO VIOLATE SOCIAL SERVICES ORDER

Also during this interview, Mrs. Cassiday said she knows that Laura is residing in the household with Marty, apparently in violation of the Social Services order. She said aside from her showing up at the Exxon station alone with Marty in the car, she purchased a water bed from Mrs. Cassiday citing the reason being, that she was tired of sleeping on the floor at her mother's house. Mrs. Cassiday said the way the deal with the water bed went was that it was agreed that Laura would pay $100 for the it. Later, however, she offered a child's bed to Mrs. Cassiday for $25 partial credit. Mrs. Cassiday agreed, but later Laura procrastinated about paying for the rest of the bed and wanted the child's bed back, that it belonged to Kevin. As it turned out, that was the bed the Kevin died in and Mrs. Cassiday said she told Laura that maybe she should turn it over to the police and have them check it out. She said Laura became upset and said it had already been checked out by the police. Mrs. Cassiday retained possession of the bed. Mrs. Cassiday said she has reported Laura to Social Services. She said Social Services did not seem to be interested as she was never interviewed.

Mrs. Cassiday and her two sons, stated they are willing to testify under oath as to the facts regarding the above interview. END OF INTERVIEWS

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Stephen B. Copeland

CONFIDENTIAL

Case #96-042

SUBJECT: WRONGFUL DEATH ACTION
VICTIM: Kevin Bryant Zimmerman
Date of Death: August 28, 1995

INTERVIEW OF
MS. DAWN MICHAELLE JOHNSTON

On June 4, 1996, during the meeting with Mrs. Sharon Cassiday, I interviewed Ms. Dawn Michaelle Johnston. Ms. Johnston is a close family friend of the Cassiday family and resides in *their home*. She is employed by the Race Track Gas Station, Gainsville and was a former co-worker with Laura Zimmerman at Bull Run Exxon. During the course of her employment at the Exxon station, Ms. Johnston became fairly well acquainted with Laura. She said Laura never showed any remorse about Kevin's death. She said that on the day when Laura was told about Chris's impending jail interview, she left the station on the pretext of a family emergency, did not return, and subsequently ended up at someone's house in Fairfax because she thought she was going to be arrested. She was away from work for several days. Ms. Johnston said when she finally did return to work, she would either have someone drive her or she would park her car away from the station. She told other employees not to say where she was there if there was a phone call for her.

In discussions Ms. Johnston had with Laura regarding Kevin's bruises, Ms. Johntson said when she saw the picture of some of Kevin's bruises shown on

television, she asked Laura how she could not notice them. Laura said she never knew about them or never questioned the bruises. Ms. Johnston remarked, as a mother (COMMENT: her son is 7 days older than Kevin would have been), how could Chris beat Kevin and Laura not know? She said Laura told her it happened one night when she came home and found her baby dead.

In other conversation, Ms. Johnston said Laura told her she knew about the kids being put in a wardrobe box in the closet as punishment. She also said Laura never said was afraid of Chris because she loved him and she would never say anything bad about him.

During this interview, I asked Ms. Johnston if Laura ever said she was abused as a child. The only thing Laura would make remarks about, was that her father, Frank Zimmerman, was always on her case. She said he would constantly yell and nagged at her about watching television. In his eyes, Laura could never do anything right. Ms. Johnston implied that Frank Zimmerman could be very controlling in Laura's life. As an example, she said every time Laura was sick, it was her father who would call the station, not Laura. Ms. Johnston said even when Laura resigned from the Exxon station, it was her father who called and told Mr. Terry, the manager, that Laura was quitting, not Laura.

Day of Chris's Pleading - Ms. Johnston said. she was told by a fellow employee, Jeanie Beachy, who sat with Laura, her mother and grandmother at Chris's court pleading, that when Laura saw Pilenzo's fiance

present with his parents, she was so angry that she remarked, "He's never had it as good as with me". Mrs. Cassiday and Ms. Beachy both agreed that it very strange that Laura's only concern was her jealously of Chris's fiance and no remorsefulness of Kevin. (COMMENT: Jeanie Beachy is currently employed at the Red Roof Inn, Manassas, VA. She is and Laura's grandmother are co-workers. No attempt was made to interview Ms. Beachy for this report.)

Ms. stated she is willing to testify under oath as to the facts regarding this interview.

END OF INTERVIEW

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Stephen B. Copeland